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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/797,410	03/10/2004	Duane Langenwaller	10222.0001	4112

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EXAMINER

FERGUSON, MICHAEL P

ART UNIT	PAPER NUMBER
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3679

DATE MAILED: 08/22/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/797,410

Applicant(s)

LANGENWALTER, DUANE

Examiner

Michael P. Ferguson

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 June 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-16 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 10 March 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Objections

1. Claim 16 is objected to because of the following informalities:

Claim 16 (line 8) recites "sleeve said post slidably". It should recite --sleeve, said post slidably--.

For the purpose of examining the application, it is assumed that appropriate correction has been made.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1, 2 and 10 are rejected under 35 U.S.C. 102(b) as being anticipated by Carlson (US 803,741).

As to claim 1, Carlson discloses a fencing system comprising:

a plurality of stakes **5** configured to be driven into the ground, each stake including a hollow stake sleeve having an internal diameter;

a plurality of posts **1**, each post having a first diameter being smaller than the internal diameter of each hollow stake sleeve, any one of the posts slidably, interchangeably inserting into and being frictionally and removably retained by any one of the stakes sleeves (Examiner notes that posts **1** directly abut stakes **5**, without the use of any adhesive, welding or other joining material, and may be removably and

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interchangeably used with anchors 6, as interchangeable alternatives, as shown in Figures 2 and 3. Inherently, posts 1 engage stakes 5 with a friction-fit. Accordingly, one may remove posts 1 from stakes 5 or stakes 6, if one chooses to do so; Figure 2); and

a plurality of structural fencing components, each fencing component including a post attachment collar 11,15 disposed on an edge thereof, the post attachment collar having an annular opening therethrough, the annular opening having a second diameter larger than the first diameter of each post, any one of the fencing components slidably, pivotally, removably , and interchangeably attaching to any one of the posts, to thereby connect adjacent structural fencing components to each other while allowing the fencing components to be rotationally adjusted relative to the posts (inherently, post attachment collar 11,15 has an opening allowing fencing components to be rotationally adjusted relative to post 1, prior to tightening of bolts 13,17; Figures 1,2,4 and 6).

As to claim 2, Carlson discloses a system wherein the structural fencing components are selected from the group consisting of base units, gate units and end units (Figure 1).

As to claim 10, Carlson discloses a system wherein the posts 1 and the structural components include decorative accents 3 (Figure 1).

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

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invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 11-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Carlson in view of Gibbs et al. (US 6,811,145).

As to claims 11 and 13, Carlson fails to disclose a system wherein the structural components and the posts are manufactured from tubular steel and wherein the structural components and the posts are covered with a powder coated finish.

Gibbs et al. teach a fencing system wherein structural components and posts are manufactured from tubular steel and wherein the structural components and the posts are covered with a powder coated finish; the steel material providing for a strong, durable fence element, and the powder coated finish providing for enhanced corrosion resistance (column 2 lines 22-34). Accordingly, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify a system as disclosed by Carlson to have components manufactured from powder coated tubular steel as taught by Gibbs et al. in order to provide for a strong, durable fence element having enhanced corrosion resistance.

As to claim 12, Carlson discloses a system wherein the structural components are welded in assembly.

As to claim 14, Carlson discloses a system wherein the structural components, posts 1 and stakes 5 are removably attached to each other by frictional contact therebetween (Figure 2).

As to claim 15, Carlson discloses a system wherein a stake 5 is wedge-shaped, and a stake sleeve comprises a cylindrical cavity therein (Figure 2).

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6. Claims 1-10 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ravert (US 1,426,215) in view of Carlson.

As to claim 1, Ravert discloses a fencing system comprising:

a plurality of footings **12** configured to be fastened to the ground;

a plurality of posts **B**, each post being adapted to be retained by the footing; and

a plurality of structural fencing components, each fencing component including a post attachment collar **6,7** disposed on an edge thereof, the post attachment collar having an annular opening therethrough, the annular opening having a second diameter larger than a first diameter of each post, any one of the fencing components slidably, pivotably, removably, and interchangeably attaching to any one of the posts, to thereby connect adjacent structural fencing components to each other while allowing the fencing components to be rotationally adjusted relative to the posts (Figures 1 and 4).

Ravert discloses a system comprising a footings adapted to be fastened to the ground, and a post being adapted to be retained by the footing instead of a stake including a hollow stake sleeve having an internal diameter; and a post having a first diameter being smaller than the internal diameter of each hollow stake sleeve, any one of the posts slidably, interchangeably insertion into and being frictionally and removably retained by any one of the stake sleeves.

Carlson teaches a fencing a system a footing **6** adapted to be fastened to the ground, and a post **1** being adapted to be retained by the footing, or a stake **5** including a hollow stake sleeve having an internal diameter, and a post having a first diameter being smaller than the internal diameter of each hollow stake sleeve, any one of the

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posts slidably, interchangeably insertion into and being frictionally and removably retained by any one of the stake sleeves (Examiner notes that posts **1** directly abut stakes **5**, without the use of any adhesive, welding or other joining material, and may be removably and interchangeably used with anchors **6**, as interchangeable alternatives, as shown in Figures 2 and 3. Inherently, posts **1** engage stakes **5** with a friction-fit. Accordingly, one may remove posts **1** from stakes **5** or stakes **6**, if one chooses to do so; Figures 2 and 3, page 1 lines 49-54). Inasmuch as the references disclose footing and stakes as art recognized equivalents, it would have been obvious to one of ordinary skill in the exercise art to substitute one for the other. In re Fout, 675 F.2d 297, 301, 213 USPQ 532, 536 (CCPA 1982).

As to claim 2, Ravert discloses a system wherein the structural fencing components are selected from the group consisting of base units, gate units and end units (Figure 1).

As to claim 3, Ravert discloses a system wherein the base units **A** include a vertical element **8** on either side thereof, and wherein the post attachment collars **6,7** are disposed on the vertical elements (Figure 3).

As to claim 4, Ravert discloses a system wherein the post attachment collars **6,7** comprise a pair of post rings disposed at the top and bottom of both of the vertical elements **8** (Figure 3).

As to claim 5, Ravert discloses a system wherein the gate units comprise a pair of complementary doors **D** each having an outside edge, wherein the outside edges

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terminate in a vertical element **15** and wherein the post attachment collars **6,7** are disposed on the vertical elements (Figures 2 and 4).

As to claim 6, Ravert discloses a system wherein the post attachment collars **6,7** comprise a pair of post hinges disposed at the top and bottom of the vertical elements **15**, the post hinges including a post ring and a hinge element to allow the complementary doors **D** to open and close (Figures 2 and 4).

As to claim 7, Ravert discloses a system wherein the end units **A** include a vertical element **8** on one side thereof and wherein the post attachment collars **6,7** are disposed on the vertical elements (Figure 3).

As to claim 8, Ravert discloses a system wherein the post attachment collars **6,7** comprise a pair of post rings disposed on the top and bottom the vertical element **8** (Figure 3).

As to claim 9, Ravert discloses a system wherein the end unit **A** includes a stake pin **14** disposed on the side opposite the vertical element, the stake pin being adapted to being inserted into the ground so as to anchor the end unit in position (Figure 4).

As to claim 10, Ravert discloses a system wherein the posts **B** and the structural components include decorative accents (Figure 4).

As to claims 16, Ravert discloses a fencing system comprising:

- a footing **12** configured to be fastened to the ground;
- a cylindrical post **B**, the post being adapted to be retained by the footing; and
- a structural fencing component including a post attachment collar **6,7** disposed on an edge thereof, the post attachment collar having an annular opening therethrough

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with a second diameter larger than a first diameter of the post, the fencing component slidably, rotatably and removably attaching to the post to thereby connect adjacent structural fencing components to each other while allowing the fencing components to be rotationally adjusted relative to the post, the structural fencing component being chosen from the group consisting of interchangeably base units, interchangeably gate units and interchangeable end units, wherein:

the base units **A** include a vertical element **8** on either side thereof, and wherein the post attachment collar comprises pair of post rings disposed at the top and bottom of both of the vertical elements;

the gate units **D** comprise a pair of complementary doors each having an outside edge, wherein the outside edges terminate in a vertical element and wherein the post attachment collar **6,7** comprise a pair of post hinges disposed at the top and bottom of the vertical elements, the post hinges including a post ring and a hinge element to allow the complementary doors to open and close; and

the end units **A** include a vertical element **8** on one side thereof, wherein the post attachment collar **6,7** comprise a pair of post rings disposed at the top and bottom of the vertical element, and further wherein the end unit further includes a stake pin **14** disposed on the side opposite the vertical element, the stake pin being adapted to being inserted into the ground so as to anchor the end unit in position (Figures 1-4).

Ravert discloses a system comprising a footing adapted to be fastened to the ground, and a post being adapted to be retained by the footing instead of a wedge-shaped stake including a stake sleeve comprising a cylindrical cavity within the stake,

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the stake sleeve having an internal diameter; and a cylindrical post having a first diameter smaller than the internal diameter of the hollow stake sleeve, the post slidably inserting into and being frictionally and removably retained by the stake sleeve.

Carlson teaches a fencing a system a footing 6 adapted to be fastened to the ground, and a cylindrical post 1 being adapted to be retained by the footing, or a wedge-shaped stake 5 including a stake sleeve comprising a cylindrical cavity within the stake, the stake sleeve having an internal diameter; and a cylindrical post having a first diameter smaller than the internal diameter of the hollow stake sleeve, the post slidably inserting into and being frictionally and removably retained by the stake sleeve

(Examiner notes that posts 1 directly abut stakes 5, without the use of any adhesive, welding or other joining material, and may be removably and interchangeably used with anchors 6, as interchangeable alternatives, as shown in Figures 2 and 3. Inherently, posts 1 engage stakes 5 with a friction-fit. Accordingly, one may remove posts 1 from stakes 5 or stakes 6, if one chooses to do so; Figures 2 and 3, page 1 lines 49-54).

Inasmuch as the references disclose footing and stakes as art recognized equivalents, it would have been obvious to one of ordinary skill in the exercise art to substitute one for the other. In re Fout, 675 F.2d 297, 301, 213 USPQ 532, 536 (CCPA 1982).

7. Claims 11-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ravert in view of Carlson as applied to claim 1 above, and further in view of Gibbs et al.

As to claims 11 and 13, Ravert in view of Carlson fails to disclose a system wherein the structural components and the posts are manufactured from tubular steel

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and wherein the structural components and the posts are covered with a powder coated finish.

Gibbs et al. teach a fencing system wherein structural components and posts are manufactured from tubular steel and wherein the structural components and the posts are covered with a powder coated finish; the steel material providing for a strong, durable fence element, and the powder coated finish providing for enhanced corrosion resistance (column 2 lines 22-34). Accordingly, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify a system as disclosed by Ravert in view of Carlson to have components manufactured from powder coated tubular steel as taught by Gibbs et al. in order to provide for a strong, durable fence element having enhanced corrosion resistance.

As to claim 12, Ravert discloses a system wherein the structural components are welded in assembly.

As to claim 14, Carlson teaches a system wherein the structural components, posts 1 and stakes 5 are removably attached to each other by frictional contact therebetween (Figure 2).

As to claim 15, Carlson teaches a system wherein a stake 5 is wedge-shaped, and a stake sleeve comprises a cylindrical cavity therein (Figure 2).

Response to Arguments

8. Applicant's arguments filed June 14, 2006 have been fully considered but they are not persuasive.

As to claim 1, Attorney argues that:

Carlson discloses a fencing system comprising a plurality of posts, each post having a first diameter being smaller than the internal diameter of each hollow stake sleeve, *any one of the posts slidably, interchangeably inserting into and being frictionally and removably retained by any one of the stakes sleeves*; and a plurality of structural fencing components, each fencing component including a post attachment collar disposed on an edge thereof, the post attachment collar having an annular opening therethrough, the annular opening having a second diameter larger than the first diameter of each post, *any one of the fencing components slidably, pivotally, removably, and interchangeably attaching to any one of the posts, to thereby connect adjacent structural fencing components to each other while allowing the fencing components to be rotationally adjusted relative to the posts.*

Examiner disagrees. As to claim 1, Carlson discloses a fencing system comprising a plurality of posts **1**, each post having a first diameter being smaller than the internal diameter of each hollow stake sleeve **5**, any one of the posts slidably, interchangeably inserting into and being frictionally and removably retained by any one of the stakes sleeves (Examiner notes that posts **1** directly abut stakes **5**, without the use of any adhesive, welding or other joining material, and may be removably and interchangeably used with anchors **6**, as interchangeable alternatives, as shown in Figures 2 and 3. Inherently, posts **1** engage stakes **5** with a friction-fit. Accordingly, one may remove posts **1** from stakes **5** or stakes **6**, if one chooses to do so; Figure 2); and a plurality of structural fencing components, each fencing component including a

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post attachment collar **11,15** disposed on an edge thereof, the post attachment collar having an annular opening therethrough, the annular opening having a second diameter larger than the first diameter of each post, any one of the fencing components slidably, pivotally, removably, and interchangeably attaching to any one of the posts, to thereby connect adjacent structural fencing components to each other while allowing the fencing components to be rotationally adjusted relative to the posts (inherently, post attachment collar **11,15** has an opening allowing fencing components to be rotationally adjusted relative to post **1**, prior to tightening of bolts **13,17**; Figures 1,2,4 and 6).

As to claims 1 and 16, Attorney argues that:

Carlson does not teach a system comprising a stake including a hollow stake sleeve having an internal diameter; and a post having a first diameter being smaller than the internal diameter of each hollow stake sleeve, any one of the posts slidably, interchangeably insertion into and being frictionally and removably retained by any one of the stake sleeves.

Examiner disagrees. As to claims 1 and 16, Carlson teaches a fencing a system a footing **6** adapted to be fastened to the ground, and a post **1** being adapted to be retained by the footing, or a stake **5** including a hollow stake sleeve having an internal diameter, and a post having a first diameter being smaller than the internal diameter of each hollow stake sleeve, any one of the posts slidably, interchangeably insertion into and being frictionally and removably retained by any one of the stake sleeves (Examiner notes that posts **1** directly abut stakes **5**, without the use of any adhesive, welding or other joining material, and may be removably and interchangeably used with anchors **6**,

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as interchangeable alternatives, as shown in Figures 2 and 3. Inherently, posts 1 engage stakes 5 with a friction-fit. Accordingly, one may remove posts 1 from stakes 5 or stakes 6, if one chooses to do so; Figures 2 and 3, page 1 lines 49-54). Inasmuch as the references disclose footing and stakes as art recognized equivalents, it would have been obvious to one of ordinary skill in the exercise art to substitute one for the other.

In re Fout, 675 F.2d 297, 301, 213 USPQ 532, 536 (CCPA 1982).

Conclusion

9. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael P. Ferguson whose telephone number is (571)272-7081. The examiner can normally be reached on M-F (8:00-5:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Daniel P. Stodola can be reached on (571)272-7087. The fax phone

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number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



MPF

08/10/06



JAMES M. HEWITT
PRIMARY EXAMINER